Court No. 2

In The High Court of Uttaranchal at Nainital.

First Appeal From Order No. 1333 of 2001.

(Old No.33 of 1999)

The New India Assurance Company Ltd.
Heard Office 87, M.G. Marg, Mumbai,
through the Assistant Divisional Manager
New India Assurance Company Ltd.,Legal
Cell 15, M.G.Marg, Civil Lines, Allahabad.
……Opp.party/Appellant.

Versus

(1)Smt.Neetu Agarwal wife of late Neeraj Kumar,
(2)Matrumal son of Sri Niranjan Lal,
(3)Smt.Ram Devi wife of Sri Matrumal,
(4)manoj Kumar (minor) son of Sri Matrumal
All residents of Yan Gali No.2 Vishnu Patti
Rasmpur Road, Haldwani, District-Nainital.
……. Claimants –Respondents

(5)Anil Kumar Dwivedi son of Sri Raj Kumar Dwivedi
R/o 88/1, Patel Nagar Rama Devi,Kanpur.
(6)Vinod Kumar son of Sri Matrumal,
R/o Vishnupuri Gali No.2,Rampur Road,
Haldwani, District-Nainital.
……Opp.parties/Respondents.

Sri R.B.Agarwal, learned counsel for the appellant.
Sri I.S.Mehra, learned counsel for the claimants-respondents.

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Dated: 12th Aug.,2004.

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been filed by the Opposite Party-New India Assurance Company under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 12.11.1998 passed by the Motor Accident Claims Tribunal/V Additional District Judge, Nainital, by which the claim petition was decreed for Rs. 4,25,000/- as compensation under Sec. 166 of the Motor Vehicles Act,

1988 against the Insurance Company in Motor Accident Claim Case No. 291 of 1996.

Brief facts giving rise to the present appeal are, that on 28.8.1996 at 5.00 p.m. when deceased Neeraj Kumar coming back from Baheri to haldwani alongwith borther Pramod Kumar through his Scooter No. UP-02 B-3334, truck No.UP 78-9767, which was being driven rashly and negligently by its driver came from opposite side, hit the scooter of the deceased causing the death of deceased Neeraj Kumar on the spot. In the said accident Pramod Kumar, brother of the deceased, also sustained grievious injuries and due to his injuries he also died on the same day in the Hospital. It was stated that the deceased was 27 years of age at the time of accident. He was doing his business and from his business he was earning Rs. 5000/- per month. The claimant No.1 is the wife of deceased Neeraj Kumar who was 20 years of age at the time of death of deceased, claimant No.2 & 3 are father and mother of the deceased and claimant No.4 is the brother of the deceased who filed the claim petition for the amount of Rs. 9,00,000/- as compensation for the death of Neeraj Kumar.

Before the Tribunal opposite party No. 1-owner of the Truck in question despite service has not contested the case. Opposite parties No. 2- New India Assurance Company contested the case on the ground, inter alia, that the accident was caused due to technical defect in the truck.

On the pleadings of the parties, following issues were framed by the learned Tribunal:-

(1) Whether on 28.08.1996 at 5.00 p.m. at Kichha-Haldwani bypass Road near Kichha Sugar factory, P.S. Kichha, District-Udham Singh Nagar, Truck No. UP-78-9796 due to rash and

negligent driving of its driver hit the Scooter in which Neeraj Kumar was traveling due to which he died on the spot ? If so, its effect ?

(2) *To what amount of compensation the claimants are entitled and from which of the opposite parties?*

The learned Tribunal decided the issues and after considering the oral and documentary evidence before it, came to the conclusion that the accident was caused due to rash and negligent driving of Rais Khan, driver of Truck No. UP 78-9767. The Tribunal decreed the claim petition against the Insurance Company for Rs. 4,25,000/- alongwith interest at the rate of 9% from the date of application till the date of award and at the rate of 12% from the date of award till the date of final payment.

The appellant- New India Assurance Insurance Company Ltd. Challenged the impugned award only on the point of quantum of compensation. We have gone through the entire material on record. There is no dispute regarding the insurance of vehicle in question. We find that there is no illegality or infirmity in the order of learned Tribunal. The Tribunal has rightly calculated the amount of compensation keeping in view the dependency of the deceased. The law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged as envisaged in sub-section (2) of Section 149 of the Motor Vehicles Act. We are fortified in our view by the Apex Court judgment in case of ***National Insurance Company Ltd. Versus Nicolletta Rohtagi and others*** reported in ***2003 (3) T.A.C. 293 (Supreme Court)*** in which the Hon'ble Apex Court has held that, ***"even if no appeal is preferred under Section 173 of 1988 Act by***

an insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".

Thus, in view of the aforesaid law laid down by the Apex Court, the appeal filed by the appellant Insurance Company has no force and is liable to be dismissed.

The appeal is dismissed accordingly. No order as to costs.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh